

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In Re:

DANIEL GARCIA MORALES

RUTH M. SOTO ACEVEDO

Debtors.

Case No.: 13-00892(BKT)

Chapter 13

DEBTORS OBJECTION TO CLAIM NO. 5-1
OF CAPITAL ONE/BEST BUY

TO THE HONORABLE COURT:

NOW COMES, Debtors, through the undersigned attorney, and very respectfully state and pray:

1. On May 13, 2013 Creditor Capital One / Best Buy Inc.(hereinafter, "Capital One") filed a Proof of Claim, registered as Number 5-1, on account of "goods sold."

2. Capital One's Claim No. 5-1 for a total of \$4,157.66 of **credit card purchases** pretends to be secured in the total amount of \$3,012.11, and contains the following attachments: (1) an account statement consistent of a computer printout; (2) several purchase transaction detail sheets; and (3) several pages of an untitled document with what seem to be contractual clauses. See Claims Register, No. 5-1.

3. After review of the attached documents, it is evident that Capital One's claim is wholly unsecured, inasmuch as none of such documents can establish that a security interest was perfected over any items purchased by Debtor.

4. For Capital One's to have any security interest over the personal property, i.e., merchandise purchased by Debtor, it would have to establish that it complied with applicable Puerto Rico law governing such security interests, namely, the Puerto Rico Commercial Transaction Act's applicable provisions.¹ See In re Ortiz, 295 B.R. 158, 161-62 (B.A.P. 1st Cir. 2003) . Namely, the security agreement must unequivocally state that Capital One's (1) would retain recourse against clearly described personal goods; and (2) would have the right to repossess the specific collateral item in case of default, with such statement immediately before the parties' signatures. See Ortiz, 158 B.R. at 163-65. "A financing statement with a list of collateral and invoices for goods sold and delivered is not sufficient to act as a security agreement[.]" Ortiz, 158 B.R. at 162-63, citing In re Arctic Air, Inc., 202 B.R. 533 (Bankr.D.R.I. 1996). Furthermore, if the legal requirements are not met, the documents' recordation in an official property registry does not create an enforceable security agreement. Ortiz, 158 B.R. at 162.

5. The documents attached to Capital One's Proof of Claim No. 5-1 do not even constitute a financing statement, but consist

¹ 19 P.R. Laws Ann. §§ 2001-2207. "[T]he provisions of the *Commercial Transactions Act* apply to "any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods." 19 P.R. Laws Ann. § 2002(1) (a) ." See In re Ortiz, 295 B.R. 158, 161 (B.A.P. 1st Cir. 2003) . Puerto Rico has not adopted the Uniform Commercial Code in its entirety. *The Commercial Transactions Act* adopted only portions of Articles 5, 7, 8 and 9 of the Uniform Commercial Code. *The Commercial Transactions Act* became effective January 1, 1998. *Id.*

of a computer printout account statement, purchase detail sheets with an incomplete description of the purchased items, except for some inventory store descriptions; and (3) and some unidentified contractual clauses. Even if the items were considered properly described at the moment of the transaction, which is denied, the agreement at issue does not comply with the requirement that the statement of the purported right to repossess be stated in the line immediately before the parties' signatures. For such reason, the documents at issue do not establish the perfection of any security interest opposable to third parties under Puerto Rico law, for such claim to be considered secured by any of Debtor's property. In light of all foresaid, Capital One's Claim No. 5-1 must be reclassified as completely unsecured, and receive pro-rata distribution with the rest of unsecured creditors.

WHEREFORE, Debtors very respectfully requests this Honorable Court to grant the instant objection to Claim No. 5-1 by Capital One's and reclassify its claim as completely unsecured.

Within **thirty (30) days** after service as evidenced by the certification, and an additional three (3) days pursuant to Fed.R.Bank.P. 9006(f), if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the objection will be deemed unopposed and may be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3)

in the opinion of the Court, the interest of justice requires otherwise. If you file a timely response, the Court may - in its discretion - schedule a hearing.

CERTIFICATE OF SERVICE: I hereby certify that this motion has been filed through the Court's CM/ECF system, which will notify the U.S. Trustee, Standing Chapter 13 Trustee, **José R. Carrión**, and that a copy of this motion has been served by regular U.S. Mail on this same date to **Capital One / Best Buy Inc.**, to the address included with its Proof of Claim No. 5-1, and all Creditors and Parties in Interest to their respective addresses of record as they appear in the attached master address list to the address of record, if any are not registered CM/ECF system participants.

In San Juan, Puerto Rico, this 24th day of May 2013.

/s/ Hector Velazquez Hernandez

Hector Velazquez Hernandez

USDC-PR NO. 208313

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